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IN THE

Supreme Court of the United States

October Term, 1968.

No. 608.

HOWARD J. THECKSTON and
CAROLINE THECKSTON,
Petitioners,

v.

TRIANGLE PUBLICATIONS, INC., a Corporation of Delaware, and DENNIS M. HIGGINS,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

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I.

COUNTERSTATEMENT OF QUESTION PRESENTED.

The Clerk of the Camden County District Court and his wife brought an action in a New Jersey state trial court against the Philadelphia Inquirer and its reporter for libel and loss of consortium. A jury verdict awarding $60,000 to the Clerk and $20,000 to his wife was reversed by a state appellate court, which ruled, on the authority of *New York Times Co. v. Sullivan,* 376 U. S. 254, and related cases, that the publications were constitutionally protected since the proofs submitted were insufficient to make out a jury question as to whether they had been published with actual malice. Therefore the question presented is:

Should this Court grant a writ of certiorari to review a judgment where the only federal question involved has previously been adjudicated in recent decisions of this Court, and the state appellate court correctly followed and applied such decisions in reversing the state trial court?

II.

COUNTERSTATEMENT OF THE CASE.

No novel or unresolved federal question is presented by the present Petition. Here, the Appellate Division of the Superior Court of New Jersey, following the express mandate of this Court in *New York Times Co. v. Sullivan*, 376 U. S. 254, has independently reviewed the trial record and concluded that a libel judgment against Respondents cannot stand under the First and Fourteenth Amendments, thereby vindicating important constitutional rights. Indeed, the complete lack of substance in the present Petition is graphically demonstrated by its rambling and conclusory nature, and by its total failure to set out the facts material to the questions raised. On these grounds alone, the writ should be denied. Rules 23(1)(e) and 23(4) of the Supreme Court of the United States.

The basic federal question in this state libel action, which was filed by Howard Theckston, the Clerk of the Camden County, New Jersey, District Court, and his wife, is whether certain publications concerning a public official were made with that high degree of malice necessary to deprive them of constitutional protection. At issue were four news articles (Petition for Certiorari, Exhibits P-1, P-2, P-4 and P-5), an editorial (Petition, P-3) and three letters to the editor (Petition, P-6), all of which appeared in Respondent's newspaper, the Philadelphia Inquirer, during the week of September 30, 1963. These publications were concerned with two incidents which admittedly occurred in the prior week in the office of the Camden County District Court Clerk. On September 23, 1963, Mrs. Margarita Buitrago, a Puerto Rican woman who had come to that office with a friend to interpret for him, was arrested, dragged out of the office, and jailed on instructions from Theckston. The second incident occurred two days later

when Petitioner, reacting to criticism of his conduct in the first incident, circulated the following memorandum to his office employees:

> "DISTRICT COURT PERSONNEL:
>
> "It has been brought to my attention by persons who come into this office, to do business in this Court, that there are some disloyal employees in this Office who are quick to comment to them about my actions the other day with regard to the arrest of a disorderly person.
>
> "I am sure that any office would be better off without such persons, especially an office of the courts.
>
> "If those persons, who have publicly criticized my actions, wish to transfer or leave this office, I shall be glad to accommodate them for I can arrange for their termination quite easily.
>
> "I will brook no interference with my administration of the affairs of this office, and if there should be a recurrence, I shall take immediate action to dispense with the services of the person responsible.
>
> HOWARD J. THECKSTON"

Theckston contended that the articles and editorials written by the Inquirer and its reporter, Respondent Higgins, concerning his conduct in these incidents libeled him, and were published with actual malice. After a trial before a jury, he was awarded $60,000 in damages, while his wife was awarded $20,000 for loss of consortium. A motion for a new trial and for judgment notwithstanding the verdict thereafter was denied by the trial judge. Respondents then appealed to the Superior Court of New Jersey, Appellate Division, which reversed on the authority of *New York Times Co. v. Sullivan*, 376 U. S. 254, and related cases, and

ruled that Petitioner's proofs had been insufficient to make out a jury question on malice. Petitioners then sought review of the judgment of the Appellate Division by filing a petition for certification with the Supreme Court of New Jersey. That court denied the petition, and the present Petition for a Writ of Certiorari followed. The relevant facts relating to the question of malice are set forth below.

Respondents first learned of the two incidents in Theckston's office on September 25, 1963, when Mrs. Idah Agin, a twelve-year employee of the office (D-a, 366a),[1] called on Higgins and informed him that Mrs. Buitrago, a Puerto Rican woman, had come to Theckston's office two days before and had been interpreting for a friend. Although instructed to be quiet by Theckston, she had refused to lower her voice, and Theckston thereupon called the police and requested that "a disorderly person" be put out of his office (D-a, 392a). Higgins was further told that Mrs. Buitrago stood quietly for five or six minutes until the police arrived, having believed that Theckston had called for the record of her friend's case (D-a, 392-93a). When two policemen arrived, each took Mrs. Buitrago by an arm, and she was dragged from the office (D-a, 393a). Mrs. Agin informed Higgins that she and the other employees had been upset by what they believed to be the injustice of Theckston's action, and then narrated to him all of the facts which appeared in the first publication (D-a, 392a, 394a; Petition, P-1), including the publication of the memorandum and the contentions that Mrs. Buitrago was merely "excited", not drunk, and had referred to her "five children" when arrested (D-a, 398a, 393a).

1. For the convenience of the Court, the same abbreviations used in the Petition are adopted herein. Thus, "D-a" preceeding specific page references refers to the two-volume "Appendix for Appellants" (Respondents here) in the Superior Court of New Jersey, Appellate Division, and "P-b" refers to Petitioners' Brief in that court.

To verify the facts as narrated by Mrs. Agin, Higgins and other reporters for the Inquirer conducted an investigation into the incidents in Theckston's office. As a result, it was verified prior to the first publication that Mrs. Agin had worked in Theckston's office for eight or nine years (actually twelve) (D-a, 347a, 366a), was Theckston's secretary (D-a, 129a), and had actually typed the memorandum in question (D-a, 304a). Higgins was instructed to and did obtain a copy of the Theckston Memorandum (D-a, 218a, 223a, 227a). After the initial contact, moreover, Higgins again verified the facts as recited to him with Mrs. Agin, and they corresponded "exactly" with her earlier narrative (D-a, 221a). During the week of publication, a total of seven additional contacts was made by Higgins with Mrs. Agin to verify specific facts (D-a, 409a). No evidence was adduced at trial that demonstrated any actual doubt, or suspicion of falsity, on Respondents' part to Mrs. Agin's story.

In addition to the investigation into Mrs. Agin's background and reliability, Respondents also verified the published facts independently with others. Prior to publication, Higgins posed questions to and discussed the case with the Inquirer's Camden reporters on four different occasions (D-a, 219a, 223a, 227a, 306a). Further, Higgins himself visited Mrs. Buitrago's home twice and, not being able to locate her on those occasions, conferred with certain of her neighbors, who told him, *inter alia*, that she had a "slew of kids." (D-a, 225a, 226a). The Camden reporters were specifically told by Higgins to check out the police and court records on Mrs. Buitrago's arrest, and as a result of such check, Higgins was informed that Mrs. Buitrago had been found guilty of disorderly conduct on a charge signed by Theckston, and had actually spent five days in jail on a fifteen day sentence after she was unable to pay the twenty-five dollar fine and costs (D-a, 219a, 220a).

Following the initial publication (Petition, P-1), Higgins spoke again with Thomas, one of the Camden reporters, who had succeeded in contacting Mrs. Buitrago, and had interviewed her for more than one and one-half hours (D-a, 246a, 247a, 248a, 483a). Thomas was informed by Mrs. Buitrago that she had three children, not five, as originally reported, and this was promptly changed in the second story (D-a, 484a; Petition, P-2 (first paragraph)). Thomas' visit revealed a neat and clean apartment (D-a, 444a, 484a, 486a), and there was no indication of intoxicants on the premises (D-a, 485-86a). Higgins and Thomas also interviewed one of the arresting police officers (D-a, 247a), an official of the American Civil Liberties Union (D-a, 249a), and an official and the counsel for the state and city Civil Service Commission (D-a, 250a).

On the day before the first publication, Higgins, who had been informed by the Assistant Managing Editor that no story would be printed before Theckston was contacted (D-a, 452a), called Theckston, who attempted to dismiss the incident, but confirmed that he had brought about Mrs. Buitrago's arrest (D-a, 133a). Thomas also tried to contact Theckston during his investigation into the facts, but was unsuccessful in contacting either him or the sentencing judge (D-a, 492a). Each of Respondents' challenged publications (Petitions, P-1 through 5), was based upon and followed the results of the investigation set forth above, and no evidence was adduced by Petitioners to demonstrate that Respondents published any of the articles with a high awareness, or indeed any awareness, of probable falsity.

III.

REASONS FOR DENYING THE WRIT.

The Judgment of the State Appellate Court on the Merits of the Federal Claim Herein Fully Accords With the Applicable Decisions of This Court, and Presents No Federal Question of Substance Not Previously Determined in Those Decisions.

In a series of decisions beginning in 1964 with *New York Times Co. v. Sullivan*, 376 U. S. 254, this Court has ruled that the First and Fourteenth Amendments bar a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he can show with convincing clarity that the publication "was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U. S. at 279-80.[2] In its opinions delivered in this series of cases, the Court has set forth the criteria for determining who is a "public official"[3] and has explained in detail the nature of the showing which must be made to establish the requisite "malice."[4] The judgment of the state court herein does not present any federal question of substance

2. Accord, *Garrison v. Louisiana*, 379 U. S. 64; *Henry v. Collins*, 380 U. S. 356; *Rosenblatt v. Baer*, 383 U. S. 75; *Curtis Publishing Co. v. Butts*, 388 U. S. 130; *Beckley Newspapers Corp. v. Hanks*, 389 U. S. 81; *St. Amant v. Thompson*, 390 U. S. 727. See also *Time, Inc. v. Hill*, 385 U. S. 374; *Linn v. United Plant Guard Workers*, 383 U. S. 53.

3. *New York Times v. Sullivan, supra* at 283, n. 23; *Garrison v. Louisiana, supra* at 76-77; *Rosenblatt v. Baer, supra* at 84-86; *Curtis Publishing Co. v. Butts, supra; St. Amant v. Thompson, supra* at 730, n. 2.

4. *New York Times v. Sullivan, supra; Garrison v. Louisiana, supra; Henry v. Collins, supra; Curtis Publishing Co. v. Butts, supra; Beckley Newspapers Corp. v. Hanks, supra; St. Amant v. Thompson, supra.*

not previously determined in those opinions. In remanding the case for entry of a judgment in favor of Respondents, moreover, the Appellate Division correctly applied the applicable constitutional criteria established by this Court. Under these circumstances, review on a writ of certiorari certainly is not warranted here under Rule 19 of this Court.

A careful reading of the present Petition suggests that Petitioners are attacking the judgment of the Appellate Division essentially on three points—(1) failure to properly apply the actual malice test; (2) failure to review "the entire record" in reversing the trial court; and (3) erroneous characterization of the Petitioner Howard Theckston as a "public official." The lack of merit in each of these points in turn will be discussed below.

1. The Appellate Division Correctly Applied the Actual Malice Rule.

In reversing the trial court's judgment in favor of Petitioners on the ground that no jury issue of liability had been made out, the Appellate Division followed the consistent rule of this Court that an appellate tribunal must review the trial court record independently in a libel action brought by a public official "so as to assure . . . that the judgment does not constitute a forbidden intrusion on the field of free expression." *New York Times Co. v. Sullivan*, 376 U. S. 254, 285; *Beckley Newspapers Corp. v. Hanks*, 389 U. S. 81, 82. Petitioners dispute the Appellate Division's implementation of this mandate on the ground that Respondents' investigation into the published stories was so deficient as to permit a jury to conclude that the publications were made "with reckless disregard of whether [they were] . . . false or not." *New York Times Co. v. Sullivan, supra*, at 280. In so contending, Petitioners fail to set forth any record

facts on this point, but rather simply quote the reasoning of the trial judge, who concluded that the required malice could have been inferred by the jury from the failure to verify the story with any eyewitness other than the informant, Mrs. Agin, from the failure to inquire into Mrs. Agin's motives for relaying the story to the Respondents, from the "characterizations" and "slant" of the publications, from certain factual misstatements, and from the "continuing barrage of repetition of the account of the incident." (Petition, 6-8, 11-12; App. B, 13b-15b).

As to the quality of the overall investigation, this Court has consistently ruled that even a complete failure to make *any* investigation does not in itself establish the requisite malice. *New York Times Co. v. Sullivan, supra* at 287-88; *St. Amant v. Thompson,* 390 U. S. 727, 733. In addition, the undisputed evidence before the trial court, set out at length above in the Counterstatement of the Case, demonstrated that the investigation undertaken in this case was far more thorough than that involved in any of the cases that have been decided by this Court, and was certainly sufficient to satisfy constitutional requirements. Thus, the uncontradicted record revealed that at least three reporters made an investigation into the facts, interviewing Mrs. Agin, the informant, several times; Mrs. Buitrago, the woman involved in the incident in the Clerk's office; and several other individuals, including a call to Theckston himself, who confirmed the fact that Mrs. Buitrago had been arrested and jailed on his initiative. Respondents' publication of the articles involved after such investigation, and in reliance upon the findings, clearly bars a jury from making the required finding "that the defendant *in fact entertained serious doubts* as to the truth of his publication," *St. Amant v. Thompson, supra* at 731, (emphasis added), or had a "high degree of awareness of . . .

probable falsity." See *Garrison v. Louisiana*, 379 U. S. 64, 74; *Beckley Newspapers Corp. v. Hanks*, 389 U. S. 81, 84-85; *St. Amant v. Thompson*, *supra* at 731.

Respondents' reliance upon the information of Mrs. Agin was also plainly insufficient, under the undisputed facts of this case, to demonstrate the required malice. Thus, as set out in detail in the Counterstatement of the Case, Respondents' investigation showed that Mrs. Agin was Theckston's secretary and had in fact typed the memorandum in question, a copy of which was obtained by Higgins. That investigation, moreover, independently confirmed that the incident had occurred in Theckston's office, resulting in Mrs. Buitrago's imprisonment. Further, Mrs. Agin's recitation of the facts on subsequent interviews corresponded "exactly" with her original narration. Rather than indicating any serious doubts as to the truth of her information, Respondents' investigation provided reasonable assurance of their probable truth. Indeed, the insubstantiality of Petitioners' claim is quickly demonstrated by comparing the facts recited above to those in *St. Amant v. Thompson*, *supra*. There in the course of a televised political speech, petitioner St. Amant published a statement assumed by this Court to charge respondent Thompson with criminal conduct. St. Amant's sole source for this charge was an interview with one Albin, a union member he had known for less than a year, and St. Amant made *no* independent investigation into the truth of the charge. Further, St. Amant failed to verify the charge against Thompson with other union members in a position to know the facts, although he had verified other information from the interview independently. On these facts, this Court reversed the libel judgment against St. Amant, holding that:

> "By no proper test of reckless disregard was St. Amant's broadcast a reckless publication about a

public officer. Nothing referred to by the Louisiana courts indicates an awareness by St. Amant of the probable falsity of Albin's statement about Thompson." 390 U. S. at 732-33.

Petitioners next contend, quoting the trial judge, that Respondents' investigation was insufficient to negate a finding of actual malice because "no inquiry was made as to [Mrs. Agin's] . . . motives although there was evidence from which it could be concluded that she was a bitter and disgruntled person who for reasons of her own was attempting to satisfy a grudge against her superior." (Petition, pp. 7, 12; App. B, 14b). It is interesting that Petitioners nowhere identify the evidence supposedly relied upon to demonstrate Mrs. Agin's alleged preexisting prejudice against Theckston. In any event, the full answer to this charge under the decisions of this Court is that there was no evidence to show that Respondents were aware either of any alleged "grudge," or that any prejudice against Theckston resulting therefrom had affected the truth of Mrs. Agin's narration. See *St. Amant v. Thompson, supra* at 733. Indeed, Higgins testified that he had questioned Mrs. Agin several times about her relationship with Theckston and had found nothing that had occurred outside of the normal employer-employee relationship (D-a, 320a).

The contention that certain factual inaccuracies and the "slant" of Respondents' publications libeled Theckston by presenting him, in the trial judge's words, "as an arrogant tyrant who trampled on the rights of innocent persons who had business with the court, and who wrongfully attempted to suppress legitimate criticism of his actions," (Petition, 11) also is constitutionally insufficient to demonstrate the required degree of malice. Even if Respondents

had intended to harm Petitioner through such a portrayal, this standing alone is insufficient to permit a libel judgment to stand against them, since what must be shown is not merely "intent to inflict harm, [but] rather . . . intent to inflict harm *through falsehood.*" *Henry v. Collins,* 380 U. S. 356, 357; *Garrison v. Louisiana, supra* at 73. (Emphasis added.) Here, the Appellate Division of the Superior Court of New Jersey correctly ruled that the inaccuracies did not go to the heart of the alleged libel, which Petitioners themselves describe as the unfavorable *characterization* of Petitioner (Petition, pp. 6-7, 11; App. B, 4b, 5b), but were merely incidental and not vital to the impact of the story as a whole.

In any event, even if the alleged inaccuracies were material, none was published with the required reckless disregard of truth or falsity. Petitioners contend first that Mrs. Buitrago had only one grown son, 21 years of age at the time of her arrest, rather than the five young children mentioned in the first publication. Actually, Mrs. Buitrago served as the foster mother of a 12-year-old nephew and a 16-year-old niece (D-a, 205-206a), and was responsible for them both (D-a, 202a). Moreover, Respondents in their first publication had relied upon Mrs. Agin's recollection here of what Mrs. Buitrago had said when she was arrested (D-a, 214a, 376a, 396a), and also upon the statements of neighbors of Mrs. Buitrago that she had "a slew of kids" (D-a, 226a). Finally, after Mrs. Buitrago had informed Thomas that she had only three children at home, the Inquirer promptly changed its stories to reflect this fact (D-a, 484a; Petition, Exhibits P-2, P-3).

Petitioners next contend that the publications erred factually in stating that the children were left without food or anyone to care for them during the week of Mrs. Buitrago's imprisonment. At the trial, however, Respondents

produced two witnesses who testified without contradiction that the children had to be taken daily to the home of the man whom Mrs. Buitrago had been helping in Theckston's office, and were fed there because of the lack of food in Mrs. Buitrago's home (D-a, 184a, 191a, 208a).

Petitioners next argue that malice was demonstrated by the failure to reveal that Mrs. Buitrago was drunk at the time of arrest, pleaded guilty to the charges against her, and apologized to Theckston the next morning. Although there was some evidence that on September 28, 1963, Harry Potter, a Camden reporter for the Inquirer, may have read to Higgins the police arrest record which revealed a notation that Mrs. Buitrago was drunk (D-a, 437a, 438a), Higgins testified that he talked *the next night* with Thomas and was informed by him that the police records bore no notation on drinking (D-a, 322a). Since a separate "custody sheet" contained information on all arrests, it is probable that Thomas had read this, and not the arrest book, and the custody sheet made no mention of Mrs. Buitrago's drinking (D-a, 508a). In any event, both of the first two publications noted Theckston's contention that Mrs. Buitrago had been drinking, and the second indicated that the American Civil Liberties Union had concluded that Theckston's contention "seemed to stand up" (Petition, P-1, P-2).

Finally, Petitioners rely upon the fact that the first publication contained a report that one of the Buitrago children had called City Hall and said he had twenty-five dollars in rent money and wanted his mother back, but was told he would have to pay an additional five dollars in costs. Higgins testified that he received this information from a City Hall switchboard operator (D-a, 232a, 233a). Petitioners then called to the stand the *County* switchboard operator, who denied making such a statement, but admitted

that there was a separate *City* switchboard on another floor (D-a, 513a, 516a), and that her switchboard was closed at the time of Higgins' Friday evening call (D-a, 513a, 232a). Such evidence was clearly insufficient to prove with convincing clarity that the alleged falsehood, even if material, was made with the actual malice required by the decisions of this Court.

The final item relied upon by Petitioners on which to base a finding of malice is the "continuing barrage of repetition of the account of the incident." Petitioners contend, moreover, that this is the first case before this Court in which more than one publication was involved (Petition 11). Again, this is flatly incorrect, for in *Beckley Newspapers Corp. v. Hanks,* 389 U. S. 81, five separate publications ranging over a two year period were found insufficient to support a finding of malice in publishing the final three articles. See 389 U. S. at 81 (Petition for Certiorari, No. 467, Oct. Term, 1967, App. C, 4a-17a). Moreover, here the first four articles sued upon appeared on three successive days (Petition, P-1 through 4), and the fifth, two days later (P-5). In these circumstances, the mere fact of multiple publication is an insufficient ground on which to base a finding of actual malice, especially in light of the detailed investigation conducted in the week of publication by Respondents.

2. The Record Before the Appellate Division Properly Satisfied the Requirements of the Applicable Decisions of This Court.

Petitioners next argue that the Appellate Division reversed the trial court's judgment in their favor without reading the full record, and in reliance upon an inadequate

Appendix prepared by Respondents. This contention is squarely contradicted by the opinion of the Appellate Division, which specifically states that "We have examined the whole record to ascertain whether plaintiffs have presented a jury issue of liability within the framework of the rule laid down in *New York Times v. Sullivan*" (Petition, Appendix B, 4b). It should be noted that under Rule 1:6-1(a) of the Supreme Court of New Jersey, which is also applicable to proceedings in the Appellate Division under Rule 2:6 of that court, any appellate judge may request from the court below any part of the record which he desires to read.[5]

Moreover, in challenging the Appendix prepared by Respondents in the Appellate Division, Petitioners cited the omitted testimony of only three of 28 witnesses in their answering brief on appeal, and printed only twelve pages of testimony in their Appendix (P-b, 12, 14-19; Appendix, 1a, 20a-31a). Of these three witnesses, Petitioners printed the omitted parts of witness Higgins (P-b, 17), and Respondents printed in sequence the entire testimony of witness Miller, including the omitted passages, in an Appendix to their Reply Brief in the Appellate Division. Although Petitioners claimed the burden of expense precluded them from printing additional testimony, they nevertheless could have designated the parts of the full trial record or the identity of other witnesses deemed vital to their case which were omitted. In addition, they had the right under Rule 1:6-1(a) of the Rules of the New Jersey Supreme Court and Rule 2:6 of the Appellate Division to have such portions of the typewritten record that they deemed necessary to have the appellate court inspect transmitted to that

5. This Rule provides in relevant part that "On the request of any judge of the appellate court the clerk of the court below shall forthwith deliver to the appellate court such portions of the original record or copies thereof as may be ordered."

court.[6] No request, however, was made by Petitioners in either the Appellate Division or the Supreme Court of New Jersey to have any portion of the trial record transmitted to either of those courts. Indeed, despite the fact that Petitioners have now complained of the insufficiency of the appellate record before the Appellate Division, before the Supreme Court of New Jersey, and before this Court, they have yet to summarize, or even to identify, what testimony of relevance was omitted from the record submitted to the Appellate Division by the parties. Thus, what Petitioners' argument comes down to is a simple contention that in every libel case, a defendant must print every shred of testimony in his Appendix at every level of appeal, even where such testimony is extraneous or duplicative, and even where the full typewritten record is available to the court. The burden which would result from such a rule is well demonstrated by the fact that the trial record here comprised some 4390 pages, of which some 2683 was testimony. Clearly, under these circumstances, this point presents no issue worthy of review by this Court on a writ of certiorari.

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6. This Rule provides, in relevant part, that "The record on appeal shall consist of the original record on file in the court or courts below and such additional matters as may be filed in the appellate courts. The clerk of each court shall retain his entire file except that on appeal from a trial court, 70 days after the filing of the transcript of the testimony or notice of appeal, whichever is later, or the approval by the trial court of a statement prepared pursuant to Rule 1:6-3, or if no testimony was taken, the filing of the notice of appeal, the clerk of the court below shall deliver to the appellate court such portions of the original record and original exhibits as the parties may indicate they desire to have available for the personal inspection of the appellate court or at the argument."

3. The Trial Court and the Appellate Division Correctly Treated Petitioner as a "Public Official."

Petitioners' final contention, that Theckston should not have been treated as a "public official," is clearly insubstantial and barred by all of the relevant decisions of this Court. Even if Theckston has not waived this point, as held by the Appellate Division (Petition, Appendix B, 5b), it is clear that as the Clerk of Court of the large metropolitan county of Camden, New Jersey, he was one of "those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs," as is amply demonstrated by the facts of this case. *Rosenblatt v. Baer*, 383 U. S. 75, 85; *St. Amant v. Thompson, supra* at 730, n. 2. The trial judge, to whom this Court has entrusted the duty of deciding the "public official" characterization in the first instance, *Rosenblatt v. Baer, supra* at 88, correctly so held, reasoning that Theckston's contact with a large section of the public in handling thousands of cases annually made his position "quite properly an object of public scrutiny and of public criticism. . . ." (Petition, App. B, 11b-12b). The "public official" designation, moreover, has consistently been applied to local office-holders by this Court, *New York Times v. Sullivan, supra; Garrison v. Louisiana, supra; Henry v. Collins, supra; St. Amant v. Thompson, supra,* and was applied most recently, without comment, to the Clerk of the Criminal Court of Raleigh County, West Virginia, in *Beckley Newspapers Corp. v. Hanks, supra.* The sole difference between the position involved in *Hanks* and the present one is that Hanks was elected, and that is a distinction without a difference. *Rosenblatt v. Baer, supra.* Thus, no question appropriate for this Court's review on a writ of certiorari is presented by this point.